



U. S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2011-0180]

Addendum to the Memorandum of Understanding with the Department of Energy (August 28, 1992); Oak Ridge, Tennessee Facilities

AGENCY: The Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Addendum to Memorandum of Understanding between the Department of Labor and the Department of Energy: the transfer of two existing building complexes and three other parcels of land located at the East Tennessee Technology Park in Oak Ridge, Tennessee; transfer of employee safety and health authority from the Department of Energy (DOE) to the Tennessee Occupational Safety and Health Administration (TOSHA).

SUMMARY: This document is a notice of an addendum to the 1992 interagency Memorandum of Understanding (MOU) between the U.S. Department of Labor and the U.S. Department of Energy. That MOU states that DOE has exclusive authority over the occupational safety and health of contractor employees at DOE Government-Owned and Contractor-Operated facilities (GOCOs). In addition, the MOU between the departments dated July 25, 2000, on safety and health enforcement at privatized facilities and operations, provides that OSHA has regulatory authority over occupational safety and health at certain privatized facilities and operations on land formerly under the control of DOE. This action is taken in accordance with the July 25, 2000 MOU, which establishes specific interagency procedures for the transfer of occupational safety and health

coverage for such privatized facilities and operations from DOE to OSHA and state agencies acting under state plans approved by OSHA pursuant to section 18 of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. § 667. The MOUs may be found on the internet via the OSHA Web page www.osha.gov under the "D" for Department of Energy Transition Activities.

EFFECTIVE DATE: The effective date of the Addendum to the Memorandum of Understanding is [ENTER THE DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Stefan Weisz, Safety and Occupational Health Specialist, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3655, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693-2110.

Access electronic copies of this notice at OSHA's Website: <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) and the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor entered into a MOU on August 10, 1992, delineating regulatory authority over the occupational safety and health of contractor employees at DOE government-owned or leased, contractor-operated (GOCO) facilities. In general, the MOU recognizes that DOE exercises statutory authority under section 161(f) of the Atomic Energy Act of 1954, as amended, [[42 U.S.C. 2201\(f\)](#)], relating to the occupational safety and health of private-sector employees at these facilities.

Section 4(b)(1) of the OSH Act of 1970, [29 U.S.C. 653\(b\)\(1\)](#), exempts from

OSHA authority working conditions with respect to which other federal agencies have exercised statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. The 1992 MOU acknowledges DOE's extensive program for the regulation of contractor health and safety, which requires contractor compliance with all OSHA standards as well as additional requirements prescribed by DOE, and concludes with an agreement by the agencies that the provisions of the OSH Act will not apply to GOCO sites for which DOE has exercised its authority to regulate occupational safety and health under the Atomic Energy Act.

In light of DOE's policy emphasis on privatization activities, OSHA and DOE entered into a second MOU on July 25, 2000 that establishes interagency procedures to address regulatory authority for occupational safety and health at specified privatized facilities and operations on sites formerly controlled by DOE. The 2000 MOU covers facilities and operations on lands no longer controlled by DOE, which are not conducting activities for or on behalf of DOE and where there is no likelihood that any employee exposure to radiation from DOE sources would be 25 millirems per year (mrem/yr) or more.

In a letter dated January 5, 2011, DOE requested that OSHA or, as appropriate, TOSHA accept occupational safety and health regulatory authority over employees at the East Tennessee Technology Park in Oak Ridge, Tennessee at two existing building complexes and three other parcels of land pursuant to the MOU on Safety and Health Enforcement at Privatized Facilities and Operations dated July 25, 2000. (Other facilities and properties at the East Tennessee Technology Park were transferred to TOSHA

jurisdiction under this MOU by *Federal Register* notices at 74 FR 120 (January 2, 2009) and 74 FR 39977 (August 10, 2009).

The buildings and parcels of land transferred to the city of Oak Ridge, the Community Reuse Organization of East Tennessee (CROET), and the Heritage Center, LLC, are described as follows:

- The K-1000 complex consists of two separate buildings: the upper building, which was formerly a visitor center, and the lower building, which was formerly an access center. Building K-1501-H&L is a two-story building located inside of the property protection fence. It is currently used for maintenance and support by CROET, the site's utility operator. Building K-1008-F is also inside of the property protection fence and consists of offices, meeting rooms, and rest rooms.
- The K-792 switchyard complex (transferred to the Heritage Center, LLC, a subsidiary of CROET) includes the following land parcels and buildings: 19.91 acres of land; K-791-B, which is used for storage and office space; Building K-796-A, which is used as a conference room; and, the K-792 northern expansion area, which is 5 acres of undeveloped land, and a railroad spur. The area also contains a privately owned building (K-1310-MP), and two privately owned trailers (K-1310-MQ and K-1310-MS). These privately owned properties, which are not being transferred, have never been under DOE authority.
- Parcel ED-4 is 18 acres of woodland located in Roane County.
- Parcel ED-5 West is 26.25 acres of grassland located within the City of Oak Ridge. Parcel ED-5 includes a concrete slab, which was formerly a base for a sampling tower.
- Parcel ED-8 is 84 acres located within the City of Oak Ridge. The Heritage Center, LLC, will receive 78 acres of land, and the 6 acres of roadway on Parcel ED-8 have been transferred to the City of Oak Ridge.

OSHA's Regional Office in Atlanta, Georgia, working with the OSHA Nashville Area Office and TOSHA, determined that TOSHA is willing to accept authority over the occupational safety and health of public-sector and private-sector employees at the two existing building complexes and the three other parcels of land at the East Tennessee Technology Park in Oak Ridge, Tennessee that were transferred by deed to the City of

Oak Ridge and CROET, and the Heritage Center, LLC, respectively. In a letter from OSHA to DOE dated October 7, 2011, OSHA stated that TOSHA is satisfied with DOE assurances that (1) there is no likelihood that any employee at these facilities will be exposed to radiation levels that will be 25 millirems per year (mrem/yr) or more, and (2) transfer of authority to TOSHA is free from regulatory gaps, and does not diminish the safety and health protection of the employees. According to this letter, TOSHA therefore accepted and maintains health and safety regulatory authority over employees at building complexes K-1000, K-1501 – H & L, K-1008 – F, and K-79.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C., directed the preparation of this notice. This *Federal Register* notice provides public notice and serves as an addendum to the 1992 OSHA /DOE MOU. OSHA is issuing this notice under the authority specified by Section 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2) and Secretary of Labor's Order No. 4-2010 (75 FR 55355).

Signed at Washington, DC, on December 19, 2011.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

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